

In re) Fair Hearing No. 9459
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her application for Essential Person-Aid to the Aged, Blind or Disabled (EP-AABD) benefits. The issue is whether the petitioner is eligible for such benefits according to the pertinent regulations.

In lieu of an oral hearing the parties have submitted the following stipulation of facts:

1. [Petitioner] receives Supplemental Security Income on her own behalf.
2. [Petitioner] resides in a household with her children, who receive payments pursuant to the ANFC program.
3. Because she is a SSI recipient, [petitioner's] income and resources are excluded from the calculation of her children's ANFC grant.
4. Another person lives in the household with [petitioner] and her children.
5. That person is no blood relationship to [petitioner's] children nor to [petitioner]; nor is that person legally married to [petitioner] or to any of the children living in the household.
6. That person furnishes specific care and services which [petitioner] cannot perform for herself.
7. Prior to the fall of 1989, the Department

granted [petitioner] benefits under the Essential Persons program of the Aid to the Aged, Blind and Disabled (EP-AABD).

8. [Petitioner's] essential person left the household for over a month during the fall of 1989, resulting in the termination of her payments under the EP-AABD program.

9. The essential person returned to the household.

10. At that time, the Department of Social Welfare (the "Department") included the essential person in the calculation of the ANFC grant paid to [petitioner's] children.

11. The Department based the inclusion on the Essential Person component of the ANFC program (EP-ANFC), WAM 2242.4.

12. The income paid to the household as a result of the inclusion of the essential person under the EP-ANFC program is less than the income paid to the household as a result of payments to [petitioner] under the EP-AABD program.

13. [Petitioner] filed a timely appeal of this determination.

ORDER

The department's decision is reversed.

REASONS

The EP-AABD program was established by state law (33 V.S.A. §§ 2652, Et. Seq.) to provide assistance to "essential persons" who provide care and services to aged, blind, or (in this case) disabled individuals. To receive such assistance the essential person must reside in the same household with the aged, blind, or disabled person; and he or she must be "needy". The Department of Social Welfare which is charged by statute with the administration of the

EP-AABD program, has established regulations covering eligibility for and payment of EP-AABD. See W.A.M. 2700 Et. Seq.

Section 2751 of those regulations provides, in pertinent part:

An "essential person" is defined as:

a spouse living in the same household with an aged, blind or disabled person, who is not himself aged, blind or disabled or eligible for Aid to Needy Families with Children (ANFC); or

a person living in the same household with an aged, blind or disabled person (or couple), who

is not himself aged, blind or disabled or eligible for Aid to Needy Families with Children (ANFC); and

is not receiving payment from Social and Rehabilitation Services for providing personal services to the aged, blind or disabled person (or couple); and

furnishes specific care and/or services which the aged, blind or disabled person (or couple) cannot perform himself but deems essential for him to stay in his present living arrangement and which would need to be provided otherwise if the essential person were not living in the household.

. . . (Emphasis added.)

In this case, the petitioner is a recipient of SSI, and is considered disabled. A person who is unrelated either to her or to any other household member provides her with services that she cannot perform herself. That person is himself needy, in that he has no other source of income. However, the department has determined that he is not eligible for EP-AABD under 2751 because he "is himself

. . . eligible for ANFC" (see supra).

In making that determination (that the petitioner's EP is eligible for ANFC) the department relies on Section 2242.4 of the ANFC regulations, which provides for ANFC assistance to an "essential person." W.A.M. § 2242. Thus, the department has determined that because the individual qualifies as an ANFC-EP, he cannot qualify as an AABD-EP.

The petitioner appeals this decision because it results in a lower level of payment to the petitioner's household. Under the department's determination, the household receives the petitioner's SSI income and an ANFC grant for three persons--the petitioner's two children and the ANFC-EP. Under the petitioner's argument, the household would receive the petitioner's SSI income, an ANFC grant for two--the petitioner's two children, and a separate EP-AABD grant for the petitioner's EP. The board concludes that the regulations clearly dictate that the petitioner's proffered method is the correct one.

The starting point for analysis is the undisputed fact that as a recipient of SSI the petitioner herself is not a member of the ANFC "assistance group". W.A.M. § 2242. Section 2242.4 of the ANFC regulations describes the circumstances under which an EP can be considered eligible for ANFC assistance. The criteria include the following:

1. The essential person lives in the same household with the applicant/recipient; and

2. He or she is not eligible in his/her own right for SSI/AABD or ANFC, but is in need according to ANFC standards.

3. He or she furnishes specific care and/or services which the applicant/recipient cannot perform himself or herself and which is deemed essential and which would need to be provided otherwise if the "essential" person were not in the household. . . .

The department's mistake in this matter is its consideration of the petitioner as an "applicant/recipient" of ANFC. She is not. W.A.M. § 2242 provides that "the assistance group shall not include an individual receiving benefits under the SSI/AABD program." Thus, it is clear that the petitioner's EP does not live in the same household with and provide services to an "applicant" or a "recipient" of ANFC as specified in § 2242.4(1) and (3), above.

Therefore, he is not eligible for EP-ANFC.¹

The petitioner's EP is eligible for EP-AABD because he "is not himself . . . eligible for ANFC" and because he meets all the other conditions of § 2751 (supra).² Because the department's decision clearly conflicts with the regulations, it is reversed.

FOOTNOTES

¹In its brief, it appears the department failed to consider paragraph (3) of § 2242.4.

²W.A.M. § 2242.4 also provides:

When an "essential" person qualifies for either SSI/AABD, or ANFC, his/her needs shall be met only

through application for and grant of aid in his/her own right. Such individuals shall not be included in an assistance group as a "needy" essential person.
(Emphasis added.)

This provision illustrates the self-contradictoriness of the department's decision. Under the department's determination, the petitioner's EP appears eligible and ineligible for ANFC-EP under § 2242.4 at the same time. Although § 2751, unlike § 2242.4, does not contain the words "in his own right" (eligible for ANFC), the regulations make little sense unless those words are assumed in both the ANFC and the AABD definitions of EP.

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